IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13331 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRAJBHAI VITTHALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13331 of 2004

MR AB MUNSHI for Petitioner No. 1

MR NAGESH SOOD ASST GOVERNMENT PLEADER for Respondent No. 1-2

MR GIRISH D BHATT for Respondent No. 3-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/02/2005

ORAL JUDGEMENT

With the consent of the learned advocates for the respective parties, the matter is taken up for final

hearing today.

#. In this petition under Article 226 and 227 of the Constitution of India, the petitioner who is the purchaser of the land in question has challenged the legality and validity of the order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 27.9.2004 passed in Revision Application No.1/2004 in dismissing the same and confirming the order passed by the Deputy Collector, Modasa dated 4.3.2004 in declaring the transaction between the petitioner and the respondent Nos.3 to 6 as invalid under the provisions of Section-9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act" for short) and imposing penalty of Rs.250/- and further directing the petitioner to hand over and restore possession of the land in question to the respondents Nos.3 to 6 - the original land owners.

#. The dispute is with regard to the land bearing Survey No.395 = Block No.442 paiki admeasuring Hectare 0-93-08 sq.mtrs situated at village Sarsoli, Taluka Bayad of District Sabarkantha. It is the case of the petitioner that the petitioner has purchased the aforesaid land in question by registered sale deed from the respondent Nos.3 to 6 original land owners on 9.5.1991 and necessary entry in the revenue records came to be mutated being Entry No.2160 on date 29.6.1991. It appears from the record that the said transaction came to be taken under suo moto review by the Deputy Collector, Modasa in the year 2004 and a show cause notice came to be issued stating that as to why the transaction should not be declared invalid and in breach of the provisions of the Act and why the order should not be passed to restore the possession of the land in question to the original land owners. The Deputy Collector, Modasa by its order dated 4th March, 2004 passed the order declaring the transaction in breach of the provisions of the Act and declared the transaction invalid under Section 9 of the Act and imposed penalty of Rs.250/- under Section 9(2) of the Act, so also, directed the petitioner to hand over possession of the land in question to the original land owners under Section 9(3) of the Act.

Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Modasa, the petitioner preferred revision application before the Secretary, Revenue Department (Appeals), State of Gujarat, being Revision Application No.1 / 2004. The number of contentions were raised on behalf of the petitioner including the fact that exercise of powers by the Deputy

Collector was after unreasonable period i.e. after a period of 13 years and that the Deputy Collector ought not have initiated the suo motu proceedings and inspite of the fact the Secretary, Revenue Department (Appeals), State of Gujarat dismissed the said revision application confirming the order passed by the Deputy Collector, Modasa. Being aggrieved and dissatisfied with the order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 27.9.2004 passed in revision application No.1/ 2004 in dismissing the same and confirming the order passed by the Deputy Collector, Modasa passed in C.O.N. Case No.1/ 2004, the petitioner has preferred the present special civil application under Article 226 and 227 of the Constitution of India.

#. Shri A.B.Munshi, the learned advocate appearing on behalf of the petitioner has submitted that the transaction in question has taken place on 9.5.1991 and necessary entry was also mutated in the revenue record in the year 1991. However, relying on the the following decisions of this Court ;

Ranchhodbhai Lallubhai Patel v. State of Gujarat and others, 1984 (2) GLR 1225;

Nanji Mulji Thumar v. State of Gujarat and others, 1985 (1) GLH (UJ) 20;

Rathod Nayamatkhan Ahmedkahan, deceased, through his heirs and legal representatives Sardarkhan Nayamatkhan Rathod & Ors. v. M.K.Das or his successor in office of the Deputy Collector, Dabhoi and others, 1998 (2) GLH 459; and

decision of this Court in case of Sarvangna Navinchandra Godiwala vs. State of Gujarat and others; 2003 (1) GLH 426;

Shri A.B.Munshi, the learned advocate for the petitioner has submitted that exercise of powers by the Deputy Collector, Modasa initiating the suo motu proceedings after a period of 13 years is therefore illegal and against the settled principles of law and the same requires to be quashed and set aside. Even on merits also, Shri Munshi has tried to argue the case to the effect that there is no breach of the provisions of the Act. Shri Munshi, therefore, requested to allow the present special civil application.

#. In response to the notice issued by this Court, Shri Nagesh Sood, the learned AGP appears on behalf of the

State Authorities and Shri G.D.Bhatt, the learned advocate appears for private parties on other side respondent Nos.3 to 6 - original land owners who have sold the land in question to the petitioner.

#. Shri Nagesh Sood, the learned AGP has submitted that as it was found by the authority that the transaction in question was hit by the provisions of the Act, the authority i.e. the Deputy Collector, Modasa was justified in quashing and setting aside the sale and declaring the sale transaction as invalid and was further justified in passing the order to restore possession of the land to the original land owners and therefore, it is requested to dismiss the present special civil application.

#. Shri G.D.Bhatt, the learned advocate for the respondent Nos.3 to 6 -original land owners had submitted that as it was found by the authority that the land in question was not jointly cultivated by the petitioner and the respondents, and hence, the authorities were right in declaring the transaction invalid and in contravention of the Act and therefore, requested to dismiss the present special civil application.

#. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the sale transaction has taken place on 9.5.1991. It is also not in dispute that the necessary entry in revenue record was mutated on 29.6.1991 which also came to be certified in the year 1991 itself. It is also not in dispute that the proceedings for the first time came to be initiated by the Deputy Collector in the year 2004 for the alleged breach of the provisions of the Act i.e. after unreasonable period of 13 years. As held in number of decisions of this Court referred to above in cases of Ranchhodbhai Lallubhai Patel v. State of Gujarat and others, 1984 (2) GLR 1225; Nanji Mulji Thumar v. State of Gujarat and others, 1985 (1) GLH (UJ) 20; Rathod Nayamatkhan Ahmedkahan, deceased, through his heirs and legal representatives Sardarkhan Nayamatkhan Rathod & Ors. v. M.K.Das or his successor in office of the Deputy Collector, Dabhoi and others, 1998 (2) GLH 459; and decision of this Court in case of Sarvangna Navinchandra Godiwala vs. State of Gujarat and others; 2003 (1) GLH 426; (Supra), the Deputy Collector could not have initiated the proceedings for breach of provisions of the Act after period of 13 years. As held by this Court in aforesaid judgments, exercise of powers by the authority after unreasonable period is considered to be illegal and this Court has quashed and set aside the

impugned orders of the authorities concerned. Therefore, in the instant case also, only on that short ground, this Court is of the opinion that the Deputy Collector, Modasa ought not have initiated and exercised such powers after unreasonable delay of 13 years and therefore, the impugned order passed by the Deputy Collector, Modasa confirmed by the Secretary, Revenue Department (Appeals) requires to be quashed and set aside.

#. For the foregoing reasons, the petition succeeds. The impugned judgment and order dated 27.9.2004 passed in Revision Application No.1 / 2004 as well as the order passed by the Deputy Collector, Modasa in C.O.N. Case No.1 / 2004 dated 4.3.2004 are hereby quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

Date : 21.2.2005 [M.R.Shah, J.]

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